

Message Text

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TAGS: OVIP, ETRD, JA

SUBJECT: VISIT OF FMC CHAIRMAN DASCHBACH

REF: TOKYO 12606

1. FOLLOWING BACKGROUND ON REBATING PROBLEM WHICH FEDERAL
MARITIME COMMISSION (FMC) CHAIRMAN WISHES TO DISCUSS
WITH AMBASSADOR MAY BE HELPFUL TO EMBASSY.

2. FOLLOWING DISCLOSURES IN 1977 OF REBATING BY A U.S.
CARRIER (SEA-LAND), CONGRESS PUT FMC, DEPARTMENT AND OTHER
EXECUTIVE AGENCIES UNDER CONSIDERABLE PRESSURE TO DEVISE
MEANS OF ENSURING COMPLIANCE BY FOREIGN SHIPPING LINES
WITH U.S. LAWS PROHIBITING REBATING AND OTHER MALPRACTICES.
ENFORCEMENT OF THESE LAWS WITH RESPECT TO FOREIGN CARRIERS
HAS BEEN DIFFICULT, SINCE RECORDS WHICH EVIDENCE THESE
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MALPRACTICES ARE LOCATED ABROAD AND THUS BEYOND THE REACH
OF FMC SUBPOENAS BY FOREIGN "BLOCKING STATUTES" RESTRICTING
RELEASE OF SHIPPING DOCUMENTS. IN CASE OF JAPAN, WE
UNDERSTAND (FROM EMBASSY A-375 OF JUNE 6, 1974) THAT
WHILE THERE ARE NO FORMAL LAWS RESTRICTING RELEASE OF
DOCUMENTS, MINISTER OF TRANSPORT CAN ORDER JAPANESE
NATIONAL TO WITHHOLD SHIPPING DOCUMENTS IF HE CONSIDERS

THAT RELEASE WOULD INFRINGE JAPANESE SOVEREIGNTY. CONGRESSIONAL CONCERN OVER THIS SITUATION HAS BEEN INTENSE, SINCE IT IS BELIEVED THAT INABILITY OF FMC TO ENFORCE U.S. PROHIBITIONS OF MALPRACTICES VIS-A-VIS FOREIGN CARRIERS PUTS U.S. CARRIERS AT COMPETITIVE DISADVANTAGE. EVIDENCE OF CONGRESSIONAL CONCERN IS FACT THAT HOUSE HAS PASSED AND SENATE NOW SERIOUSLY CONSIDERING LEGISLATION WHICH WOULD PROVIDE FOR SUSPENSION OF TARIFFS (I.E., IN EFFECT DENIAL OF U.S. PORT ACCESS) OF FOREIGN CARRIERS WHICH DO NOT COMPLY WITH FMC DOCUMENT REQUESTS, REGARDLESS OF WHETHER FAILURE TO COMPLY RESULTS FROM LAWS OF THEIR HOME COUNTRIES.

3. THE TWO PREVIOUS FMC CHAIRMEN HAD HELD DISCUSSIONS WITH GOJ SHIPPING OFFICIALS ABOUT POSSIBLE MEANS OF ELIMINATING REBATING IN U.S.-JAPAN TRADES BUT WERE UNABLE TO FIND ACCEPTABLE SOLUTION. HENCE, AT TIME OF DASCHBACH'S APPOINTMENT, FMC WAS ON VERGE OF ISSUING SUBPOENAS TO JAPANESE CARRIERS, A STEP WHICH WOULD HAVE SERIOUSLY STRAINED U.S.-JAPAN SHIPPING RELATIONS, AND POSSIBLY HAD WIDER EFFECTS. UNLIKE HIS PREDECESSORS, HOWEVER, DASCHBACH SOUGHT DEPARTMENT'S ASSISTANCE AND AGREED TO JOINT DEPARTMENT-FMC EFFORT TO RESOLVE THE PROBLEM. AS A RESULT, ROUND OF U.S.-JAPAN SHIPPING TALKS WAS HELD IN SAN FRANCISCO JANUARY 4-6, 1978 WITH DEPARTMENT AND FMC

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OFFICERS (INCLUDING DASCHBACH) PARTICIPATING ON U.S. SIDE. GOJ SIDE WAS LED BY SHIGEYA GOTO, DIRECTOR GENERAL OF SHIPPING BUREAU, MINISTRY OF TRANSPORT.

4. AT SAN FRANCISCO MEETING, UNDERSTANDING WAS REACHED ON GENERAL OUTLINES OF A METHOD OF RESOLVING PROBLEM. UNDER PROCEDURE AGREED TO, CARRIERS WOULD FURNISH TO AN INDEPENDENT, INTERNATIONALLY RECOGNIZED ACCOUNTING FIRM ALL AVAILABLE RECORDS OF REBATING IN U.S.-JAPAN TRADES OVER LAST FIVE YEARS. ACCOUNTING FIRM WOULD SUMMARIZE AND CERTIFY TO FMC AMOUNT, NATURE AND EXTENT OF CARRIERS' REBATES. FMC WOULD THEN ATTEMPT TO NEGOTIATE SETTLEMENT DIRECTLY WITH SIX JAPANESE CARRIERS INVOLVED. IT WAS ANTICIPATED THAT GOJ MINISTRY OF TRANSPORT, HAVING APPROVED THIS PROCEDURE, WOULD USE ITS INFLUENCE WITH JAPANESE CARRIERS TO ENCOURAGE THEM TO BE RESPONSIVE IN NEGOTIATIONS WITH FMC. DEPARTMENT WAS PLEASED BY THIS UNDERSTANDING, WHICH WE FELT HELD PROMISE OF ELIMINATING SERIOUS IRRITANT IN U.S.-JAPAN SHIPPING RELATIONS, AND IS THUS INTERESTED IN SEEING IT SUCCESSFULLY IMPLEMENTED.

5. SOME DIFFICULTIES HAVE ARISEN IN COURSE OF EFFORTS

TO IMPLEMENT ABOVE UNDERSTANDING. GOJ MINISTRY OF

TRANSPORT PROPOSED AS ACCOUNTANT MUNEYA SUZUKI, A ONE-TIME OFFICIAL OF MINISTRY OF TRANSPORT. GOJ OFFICIALS ARGUED THAT SUZUKI WAS UNIQUELY QUALIFIED, HAVING AUDITED LINER OPERATORS WHEN WITH MINISTRY OF TRANSPORT, AND ASSURED DEPARTMENT AND FMC THAT HE HAS NO CURRENT INVOLVEMENT WITH ANY OF SIX LINES INVOLVED. GOJ OFFICIALS HAVE BEEN EXTREMELY RELUCTANT TO CONSIDER ANY OTHER ACCOUNTING FIRM, ARGUING THAT MAJOR INTERNATIONAL ACCOUNTING FIRMS DO NOT HAVE SPECIALIZED KNOWLEDGE OF SHIPPING AND COULD NOT DO THIS JOB EXPEDITIOUSLY. ON BASIS GOJ ASSURANCES, DEPARTMENT RECOMMENDED TO FMC THAT IT AGREE TO SELECTION OF SUZUKI, DESPITE RESERVATIONS
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ON APPEARANCES OF CHOOSING RELATIVELY UNKNOWN ACCOUNTANT. FMC HAS BEEN CONCERNED, HOWEVER, THAT SINCE SUZUKI'S IS NOT WELL-KNOWN ACCOUNTING FIRM AND SINCE HE HAS PREVIOUSLY WORKED FOR MINISTRY OF TRANSPORT, RESULTS OF HIS AUDIT MIGHT NOT BE ENTIRELY CONVINCING, PARTICULARLY TO CONCERNED CONGRESSIONAL CIRCLES.

6. GOJ SHIPPING OFFICIALS RESPONDED TO THIS FMC CONCERN BY PROPOSING THAT FORMER GOJ AMBASSADOR TO U.S. ASAKAI CONFIRM SUZUKI'S FINDINGS AND THEREBY LEND HIS PRESTIGE TO THEM. FMC DID NOT FIND THIS PROPOSAL BY ITSELF ENTIRELY SATISFACTORY, SINCE ASAKAI REPORTEDLY HAS CONNECTIONS WITH VARIOUS JAPANESE HOLDING COMPANIES AND IS NOT WELL-KNOWN TO U.S. CONGRESS. FMC THEN CONCEIVED OF ARRANGING FOR A FIGURE IN WHOM CONGRESS (AND OTHER POTENTIAL CRITICS OF THE ARRANGEMENT) HAS FAITH TO CONFIRM SUZUKI'S FINDINGS. FMC INITIALLY PROPOSED TO DEPARTMENT THAT AMBASSADOR MANSFIELD UNDERTAKE THIS ROLE "IN HIS PRIVATE CAPACITY." DEPARTMENT COUNSELED FMC AGAINST THIS PROPOSAL, NOTING THAT WE DID NOT BELIEVE AMBASSADOR COULD SEPARATE PRIVATE AND OFFICIAL CAPACITIES IN THAT WAY AND THAT WE DID NOT BELIEVE IT WOULD BE APPROPRIATE OR PRACTICAL FOR AMBASSADOR TO BECOME INVOLVED IN CONFIRMATION OF COMMERCIAL DATA. DEPARTMENT URGED FMC TO ATTEMPT TO SETTLE ON ANOTHER FIGURE ENJOYING CONGRESSIONAL RESPECT TO PERFORM THIS FUNCTION. FMC WAS UNABLE, HOWEVER, TO COME UP WITH ACCEPTABLE ALTERNATIVE FIGURE AND CONTINUED TO PRESS FOR AMBASSADOR MANSFIELD'S ASSISTANCE. IN RESPONSE WE REITERATED OUR VIEW THAT ANY SUBSTANTIVE INVOLVEMENT BY AMBASSADOR WOULD NOT BE APPROPRIATE. WE DID, HOWEVER, INDICATE THAT IF FMC WOULD FIND IT HELPFUL AND IF AMBASSADOR AGREED, WE WOULD SEE NO OBJECTION TO SOME PURELY FACILITATIVE GESTURE BY AMBASSADOR (SUCH AS
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LETTER TO ASAKAI EXPRESSING HOPE THAT ASAKAI MIGHT BE ABLE TO PROVIDE ASSISTANCE IN VERIFYING SUZUKI'S FINDINGS),

SO LONG AS IT DID NOT SUBSTANTIVELY INVOLVE AMBASSADOR IN AUDITING PROCEDURES OR COMMERCIAL NEGOTIATIONS AND DID NOT PUT AMBASSADOR IN POSITION OF APPEARING TO VOUCH FOR SUZUKI'S FINDINGS.

7. COMMENT: RESOLUTION OF LONG-STANDING REBATING PROBLEM IS IMPORTANT BOTH TO REMOVE AN IRRITANT IN U.S.-JAPAN RELATIONS AND TO DEMONSTRATE TO CONCERNED MEMBERS OF CONGRESS THAT RESOLUTIONS OF REBATING PROBLEMS CAN BE ACHIEVED BY MEANS OTHER THAN LEGISLATION CURRENTLY UNDER CONSIDERATION (WHICH WOULD CAUSE SEVERE FOREIGN POLICY DIFFICULTIES). CHAIRMAN DASCHBACH AND OTHER FMC OFFICERS ARE WELL AWARE, HOWEVER, OF DEPARTMENT'S SERIOUS RESERVATIONS CONCERNING ANY SUBSTANTIVE ROLE FOR AMBASSADOR IN THIS MATTER. UNLESS AMBASSADOR BELIEVES THAT ARRANGEMENTS AS DESCRIBED BY DASCHBACH WILL BE CONVINCING TO CONCERNED MEMBERS OF CONGRESS, DEPARTMENT BELIEVES AMBASSADOR MIGHT PREFER NOT TO PARTICIPATE IN THESE ARRANGEMENTS. IN ANY EVENT, DEPARTMENT BELIEVES IT WOULD BE UNWISE FOR AMBASSADOR TO GO BEYOND PURELY FACILITATIVE ROLE. CHRISTOPHER

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